

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**DEBTOR'S FIRST DAY MOTION FOR ENTRY OF AN ORDER DIRECTING
JOINT ADMINISTRATION OF RELATED CASES
PURSUANT TO BANKRUPTCY RULE 1015 (b)(4)**

Debtor EPH Assistance Corporation (U.S.A.) (“EPH” or “Debtor”) hereby moves the Court for entry of an order, substantially in the form attached hereto as Exhibit A, directing joint administration of this Chapter 11 case with the related Chapter 11 case of The Estelle Peabody Memorial Home of the Synod of Lincoln Trails of the Presbyterian Church (U.S.A.) pursuant to Bankruptcy Rule 1015(b)(4) and in support thereof, states as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this District pursuant to 28 U.S.C. § 1408 and 1409.

Background

2. On June 28, 2013 (the “Petition Date”), the Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code thereby commencing the above-captioned case. The Debtor has continued in possession and management of its properties and operates its business as debtor-in-possession. No trustee or examiner has been appointed.

3. Debtor is an Indiana not-for-profit organized for the purposes of assisting and supporting Peabody Retirement Community, of which Debtor is a wholly owned subsidiary, with respect to governmental relations and regulatory compliance issues, among other things.

4. Debtor is located in Indianapolis, Indiana.

5. Debtor's operations are managed by a Board of Directors (the "Board"). As of the Petition Date, there were three (3) Directors. There currently are no term limits for Directors.

6. Debtor's affiliate, Peabody Retirement Community, is subject to oversight and regulation by, inter alia, the Securities Division of the Office of the Indiana Secretary of State including Indiana Code 23-2-4. Debtor assists Peabody with its discussions and annual filings and registrations with the Secretary of State's Office.

7. Debtor's affiliate is also required to be licensed by the Indiana State Department of Health and must regularly pursue relicensing. As with the above, Debtor assists Peabody in such efforts.

8. In addition, Debtor's affiliate has, on occasion, determined the need to interact with elected officials and regulators to make its needs or concerns known on open issues although Debtor is not, and has not undertaken effort as, a lobbyist.

Relief Requested

9. By this Motion, the Debtor seeks entry of an order directing joint administration of the Chapter 11 case for procedural purposes only with the related case of The Estelle Peabody Memorial Home of the Synod of Lincoln Trails of the Presbyterian Church (U.S.A.). Specifically, the Debtor requests that the Court maintain one file and one docket for the jointly-administered cases under the first-filed case of EPH and that the cases be administered under a consolidated caption, as follows:

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¹ The Debtors include EPH Assistance Corporation (Case No. 13-06952-JKC-11) and Estelle Peabody Memorial Home of the Synod of Lincoln Trails of the Presbyterian Church (U.S.A.) (Case No. 13-71035-BHL-11).

10. Debtor also requests that a docket entry, substantially similar to the following, be entered on the docket of each case to reflect the joint administration of the Chapter 11 cases:

An order has been entered [Docket No. ____ in Case No. 13-71035-BHL-11] in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the joint administration of the Chapter 11 cases of EPH Assistance Corporation (Case No. 13-06952-JKC-11) and Estelle Peabody Memorial Home of the Synod of Lincoln Trails of the Presbyterian Church (U.S.A.) (Case No. 13-71035-BHL-11). All further pleading and other papers shall be filed in, and all further docket entries shall be made in Case No. 13-06952-JKC-11.

Basis Therefore

11. The statutory basis for the relief requested herein is section 105(a) of the Bankruptcy Code, Fed. R. Bankr. 1015(b) and S. D. Ind. B-1015-1.

12. Bankruptcy Rule 1015(b)(4) states that “[i]f . . . two or more petitions are pending in the same court by or against . . . (4) a debtor and an affiliate, the court may order the joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest . . .”.

13. The term affiliate is defined by 11 U.S.C. §101(2) as an “entity that directly or indirectly own, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor.”

14. Section 105(a) of the Bankruptcy Code also provides this Court with the power to grant the relief requested herein by the Debtors as it permits a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

15. The entry of an order to jointly administer is common and generally does not alter any of the substantive rights available to creditors of a debtor or other parties in interest. *See e.g.*, *In Lauth Investment Properties, LLC*, Case No. 09-06065-BHL-11 (Bankr. S.D. Ind.); *ATA Airlines, Inc.*, Case No. 04-19868-BHL-11 (Bankr. S.D. Ind.).

16. Joint administration of these Chapter 11 cases will provide administrative convenience without harming the substantive rights of any party in interest. Entry of an order directing joint administration of the cases will permit the Debtors to reduce fees and costs in connection with the administration of both Chapter 11 cases by avoiding duplication, including filing the same documents in both cases, monitoring both dockets and maintaining individual case files for each Debtor.

17. Additionally, joint administration will allow the Court to administer the cases consistently and efficiently and relieve the burden of entering identical orders in both cases and will permit the Office of the United States Trustee to more easily monitor the cases.

18. Because this Motion seeks only to jointly administer the cases, there will be no conflicts, or potential conflicts, of interest of creditors or parties in interest of the two estates. EPH Assistance Corporation is a subsidiary of Peabody and Debtor is not seeking an order to

consolidate the cases or otherwise alter the rights of either set of creditors or parties in interest with this request and thus no creditors or parties in interest would be harmed by the joint administration of the cases.

Notice

19. Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Indiana; (b) the entities on the list of 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) all secured creditors of Debtor; and (d) any counsel or party that has filed an appearance pursuant to S.D. Ind. B-9010-1.

Coordination with the United States Trustee

20. Pre-petition, counsel for the Debtors conferred with the United States Trustee regarding the relief requested in this Motion but because the relief requested herein does not lend itself to advance resolution, Debtor did not confer with other affected parties regarding the relief requested herein.

WHEREFORE, Debtor requests entry of an order granting the relief requested in this Motion, substantially in the form attached hereto as **Exhibit A**, and such other legal and equitable relief to which Debtor is entitled.

Respectfully Submitted,

/s/ Michael W. Hile

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